U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-O-O-

DATE: SEPT. 25, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Nigeria currently residing in Nigeria, has applied for an immigrant visa. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Applicant was also found inadmissible for 10 years after removal from the United States and seeks permission to reapply for admission to the United States prior to the expiration of this inadmissibility on [redacted] 2018. *See* section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). Permission to reapply for admission to the United States is an exception to this inadmissibility, which USCIS may grant in the exercise of discretion.

The Director of the Accra, Ghana, Field Office denied the application, concluding that the Applicant was subject to the marriage fraud provisions of section 204(c) of the Act and that the Petitions for Alien Relative (Form I-130) approved on his behalf had been approved in error. The Field Office Director also concluded that the Applicant did not establish extreme hardship to a qualifying relative. In the same decision, the Field Office Director denied the Applicant's Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal, as a matter of discretion.

On appeal, we found that the Field Office Director erred in making a section 204(c) finding, but that the Applicant did not establish that a qualifying relative would experience extreme hardship if he were denied admission. We denied a subsequent motion to reopen, finding that the Applicant's spouse would experience extreme hardship as a result of relocation, but not as a result of separation from the Applicant.

On motion to reopen, the Applicant submits additional evidence and asserts that his spouse would experience extreme hardship if she remained in the United States without him.

Upon review, we will grant the motion to reopen and sustain the appeal.

I. LAW

Any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act.

There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; *see also Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

Any individual, other than an arriving alien described in clause section 212(a)(9)(A)(i), who "has been ordered removed . . . or departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible." Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

Foreign nationals found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if "prior to the date of the reembarkation at a place

outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission."

II. ANALYSIS

The issue on appeal is whether the Applicant's spouse would experience extreme hardship as a result of the Applicant's waiver being denied and, if so, whether the Applicant merits a favorable exercise of discretion. We previously found that the Applicant did not establish that his spouse would experience extreme hardship if she remains in the United States without him.

On motion, the Applicant submits additional evidence and asserts that his spouse would experience extreme hardship if she remains in the United States without him. The record includes, but is not limited to, financial records, medical records, psychological evaluations, and information on Nigeria.

The Applicant does not contest the finding of inadmissibility in his case, which is supported by the record.[1] We find that the Applicant has established extreme hardship to his spouse as a result of his waiver being denied and that he merits a waiver and permission to reapply as a matter of discretion.

A. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative for a section 212(i) waiver is his U.S. citizen spouse.

We previously found that the record established the Applicant's spouse would suffer extreme hardship as a result of relocation to Nigeria, but did not establish that the Applicant's spouse will suffer extreme hardship as a result of separation.

The Applicant asserts that he was the family's breadwinner when he resided in the United States and that his spouse is experiencing financial hardship since his removal in 2008. He states that he had invested in several rental properties in the United States that carry debt. He explains that his spouse has had difficulty managing these properties, many tenants have fallen behind with their rent payments, and his spouse has become nearly bankrupt trying to maintain the investments. The record includes past due electric bills and notices to disconnect electric service related to these properties, a final past due notice for over $34,000 for water and sewer fees, a final property tax delinquency bill, and several final court order monetary judgments for the properties. The record also includes checks written from the Applicant and his spouse's joint bank accounts for various housing and tax expenses.

[1] The record establishes that the Applicant misrepresented his marital status in order to receive a nonimmigrant visa in 1983 and lawful permanent resident status in 1989.

The Applicant asserts that his spouse is also experiencing medical, emotional and psychological hardship in his absence. A letter from the Applicant's spouse's physician states that she had a Baker's cyst that ruptured and she had severe tissue damage, causing chronic pain. The physician states that she also developed back pain with radiculopathy, chronic back pain with numbness, and burning pain in the left lower extremity, and she had to resign from her job due to the pain.

The record includes psychological evaluations that state that the Applicant's spouse was diagnosed with Major Depressive Disorder. The most recent evaluation explains that the Applicant's spouse is burdened by intense depressed and anxious affect, she has decreased appetite and trouble focusing, and she experiences suicidal ideation. The psychologist states that depression can be substantially improved if extreme stressors are removed, and in the present case a cause of extreme stress to the Applicant's spouse is the absence of the Applicant.

The record reflects that loss of the Applicant's income and maintaining the properties that the Applicant owns has resulted in a financial burden on the Applicant's spouse. The record also reflects that the Applicant's spouse has medical issues which are chronic in nature and have limited her ability to work and support herself. In addition, the record reflects that the Applicant's spouse has significant emotional and psychological issues resulting from being separated from the Applicant. Upon consideration of these hardships in the aggregate, we find that the Applicant's spouse would experience extreme hardship if she remains separated from the Applicant.

B. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

The Applicant's favorable factors include his family ties in the United States, including his U.S. citizen spouse and two adult U.S. citizen sons; hardship to the Applicant and his spouse if he is denied admission; and the Applicant's apparent lack of a criminal record. His unfavorable factors include his misrepresentations, his unauthorized period of stay in the United States, and his removal

order. We find that the favorable factors outweigh the unfavorable factors, and the Applicant merits a favorable exercise of discretion.[2]

III. CONCLUSION

The Applicant has established that his spouse would experience extreme hardship and that he merits a waiver and permission to reapply for admission as a matter of discretion.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of O-O-O-*, ID# 486554 (AAO Sept. 25, 2017)

[2] The Applicant's Form I-212 was denied in the same decision denying the Form I-601, based solely on the denial of the waiver application. On [redacted] 2008, he was removed from the United States pursuant to an order of removal by an immigration judge. As such, he is inadmissible under section 212(a)(9)(A)(ii) until [redacted] 2018, and requires permission to reapply for admission. A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. We have found that the Applicant merits a favorable exercise of discretion related to his waiver application, and for the reasons stated in that finding, we find that his Form I-212 should also be granted as a matter of discretion.